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Proceeding by the Department on its own Motion to)	
Implement the Requirements of the Federal)	
Communications Commission's Triennial Review)	D.T.E. 03-60
Order Regarding Switching for Mass Market)	
Customers)	
)	

Verizon Massachusetts (“Verizon MA”) hereby moves that the Department immediately stay further proceedings pursuant to the Federal Communication Commission (“FCC”) *Triennial Review Order* (“TRO”) delegation of UNE impairment decision-making authority, in light of yesterday’s ruling by the United States Court of Appeals for the District of Columbia Circuit in *United States Telecom Association v. Federal Communications Commission*, No. 00-1012 (decided March 2, 2004) (“Opinion”). Because the Opinion invalidates both the FCC’s delegation of authority to determine whether CLECs are impaired without access to unbundled elements and the substantive tests that the FCC promulgated for making such determinations, continuing these proceedings is inefficient for both the parties and the Department. Given the volume of pending activity, Verizon MA brings this motion so that all parties can be expeditiously apprised of the schedule going forward in this docket.

The Court of Appeals found that the FCC’s delegation of authority to the Department to “determine whether CLECs are impaired without access to network

elements” was unlawful.¹ This ruling applies to *all* elements of the “granular” impairment cases presently before the Department – dedicated transport, mass market switching and high capacity loops.² Moreover, the Opinion also vacated the FCC’s underlying nationwide impairment standards for mass market switching and the dedicated transport elements (DS1, DS3 and dark fiber), and remanded those standards to the FCC for further examination and revision in conformance with the Opinion.³ Therefore, even if the states’ delegated authority to act were not vacated, the standards upon which the state cases were predicated have been invalidated.⁴

Finally, the Court temporarily stayed its vacatur (delaying issuance of its mandate) until the *later* of (1) the denial of any petition for rehearing or rehearing en banc or (2) 60 days from March 2, 2004. While this gives the FCC 60 days to revise both its process and its standards, it would be feckless to continue *these* proceedings, which exist under an unlawful delegation and are aimed at the wrong substantive tests. Given the tremendous amount of work which remains to be accomplished, the Department should immediately stay further proceedings in this docket for a minimum of 60 days, or at least until such time as it is clear whether there will be any continuing role for the states following a determination on remand by the FCC.

¹ Opinion at 18.

² The Court vacated “in particular” the FCC’s subdelegation schemes for mass market switching and dedicated transport elements, Opinion at 18, but its rationale clearly extended to the entire range of authority delegated to the states under the so-called “nine month case.”

³ Opinion at 22, 28 and 61.

⁴ The Department should move forward on Track B of this proceeding, related to hot cuts. The Opinion nowhere suggests that state commissions may not proceed on the batch hot cuts process.

This stay should extend to all currently scheduled dates for Track A, including the dates for evidentiary hearings and briefs. Because these dates are rapidly approaching, Verizon MA asks the Department for an expedited ruling on this motion.

Respectfully submitted,

VERIZON MASSACHUSETTS

Bruce P. Beausejour
Victor Del Vecchio
Alexander W. Moore
Linda Ricci
185 Franklin Street – 13th Floor
Boston, Massachusetts 02110
(617) 743-2445

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